



DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS-19-MFH-0024]

New Fee Structure for Section 538 Guaranteed Rural Rental Housing Program Initial and Annual Guarantee Fees

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is announcing a new fee structure for the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) initial and annual guarantee fees.

DATES: The effective date of the revised fees is [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Tammy Daniels, Finance and Loan Analyst, Multi-Family Housing Production and Preservation Division, Rural Housing Service, USDA, STOP 0781, 1400 Independence Avenue, SW, Washington, DC 20250-0781, Telephone: (202) 720-0021 (this is not a toll-free number); e-mail: tammy.daniels@usda.gov.

SUPPLEMENTARY INFORMATION:

Authority:

The RHS administers the 538 Guaranteed Rural Rental Housing Program (GRRHP) loans under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p-2) and operates under 7 CFR part 3565. As set forth in 7 CFR part 3565, the Agency will publish any changes to the fees in a Notice in the **Federal Register**.

Background

RHS administers the Section 538 Guaranteed Rural Rental Housing Program (GRRHP) under the authority of the Housing Act of 1949, as amended (42 U.S.C. 1490p-2). Under the GRRHP, RHS guarantees loans for the development of housing and related facilities in rural areas. Section 538(g) authorizes the Secretary of Agriculture to charge certain fees to lenders for loan guarantees (see, 42 U.S.C. 1490p-2(g)). The fees charged are used to cover the costs of loan guarantees pursuant to the provisions of the Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

On December 3, 2020, the Agency published a final rule in the **Federal Register** at 85 FR 77985 with an effective date of January 4, 2021, which amended 7 CFR part 3565 by removing the stated amount that the Agency will charge for the initial and annual guarantee fees. This regulation update affords the program the flexibility and ability to create the maximum housing affordability to residents by lowering program costs when practical, without the need for a regulatory change. As stated in the final rule, if changes occur in the fee amounts, the Agency will release those changes through a Notice in the **Federal Register** and will provide guidance on how to process the loans which will be impacted by the new fee structure. Interested parties will be able to locate current fees on the Agency's website at:

<https://www.rd.usda.gov/programs-services/multifamily-housing-programs/multifamily-housing-loan-guarantees>.

New Fee Structure

Projects with a fully executed (signed by both the Agency and Lender) conditional commitment as of the date this notice is published, or a loan obligated prior to October 1, 2021 are ineligible for the reduced fees. Loans in the following three categories will receive a greater reductions in the fees: (1) Green and Energy Efficient, (2) Preservation of Existing Section 515, 514/516 Rural Development Properties, and (3) Workforce Housing. The overall status of the GRRHP portfolio is healthy. There is a low delinquency rate, the program operates at a negative subsidy, and the program has used all or most of its appropriations in the past 5 years. The initial

and annual guarantee fee is usually passed on to the borrower. Reducing the fees will decrease the debt service for future loans which will ultimately decrease the rents and provide savings to the tenants, allow more funds to be allocated toward capital improvements while continuing to offset the cost to operate the program.

On February 18, 2021, the Agency conducted a forum soliciting feedback from Section 538 lenders, borrowers, and program stakeholders. The general feedback was that the new fee structure for the initial and annual guarantee fees should take into account affordability and target projects whose rents are at 60 percent Area Median Income (AMI) and have current government subsidies. The new fee structure being implemented has taken this into account by providing greater reduced fees for preservation of existing Section 515, 514/516 Rural Development properties.

The annual fee will not be changed for existing Section 538 GRRHP loans. At the discretion of the Agency, Section 538 GRRHP loans that are refinanced or modified after the revised fee structure goes into effect and can successfully demonstrate that the reduced fee results in capital improvements to the property or a reduction of rents, will be considered for eligibility of a reduced fee. Existing 538 GRRHP loans that are refinanced or modified, solely as part of an interest rate reduction, will not be eligible for reduced annual fees. The three categories that will receive a greater reduction in the fees are detailed as follows:

1. Workforce Housing: Workforce Housing is defined as housing affordable to households earning between 60 and 120 percent of area median income (AMI). By statute, the income in the 538 program is capped at 115 percent AMI. Properties with 100 percent of the units affordable to households at 80 percent – 115 percent AMI will be eligible for the reduced fee.
2. Preservation of Existing Section 515, 514/516 Rural Development Properties

3. Green and Energy Efficient Fee Structure: Upon submission of the application for existing properties that meet the requirement of the Green/Energy Efficient fee structure, the lender must collect from the borrower and submit to the Agency evidence that the specified, independent green building standard has been achieved. Owners may access the United States Environmental Protection Agency's ENERGY STAR Portfolio Manager software at no cost. Evidence will be in the form of a copy of the Portfolio Manager's report showing that the building performance is at or above 75 on the 1–100 ENERGY STAR score in Portfolio Manager. For new construction and substantial rehabilitation or renovations, the lender and owner must certify that it will pursue and achieve an industry recognized standard for green building. That evidence must be submitted no more than 15 months after completion of construction or 15 months after break-even occupancy when those standards have been achieved. If these standards are not achieved, the Agency may impose protocols or restrictions to ensure the property is brought into compliance.

Acceptable, independently verified standards include the Enterprise Green Communities Criteria; U.S. Green Building Council's LEED–H, LEED–H Midrise, LEED–NC, or LEED for Existing Buildings: Operations & Maintenance; ENERGY STAR certification; EarthCraft House; EarthCraft Multifamily; Earth Advantage New Homes; Greenpoint Rated New Home; Greenpoint Rated Existing Home (Whole House or Whole Building label); the National Green Building Standard (NGBS); Passive Building Certification or EnerPHit Retrofits certification from the Passive House Institute US (PHIUS), International Passive House Association, or the Passive House Institute; and Living Building Challenge Certification from the International Living Future Institute, or other industry-recognized green building standards, in the sole discretion of Rural Development, Multi-Family Housing. These programs evolve and newer versions are published, sometimes annually. Projects must

participate in the current version of the programs and must consult with the program provider for the most current, applicable and available programs for their project location.

The Agency announces the new fee structure as follows::

	Initial Guarantee Fee (due prior to or at closing)	Annual Guarantee Fee (due each year or portion of the year the guarantee remains in effect). The annual guarantee fee is paid in advance. (Example: A loan that closes on December 31, 2021 will incur the annual fee for 2022).
	Basis Points	Basis Points
Amended Fee Structure	65	35
Workforce Housing – Rents between 80% -115% AMI	60	25
Preservation of Existing Section 515, 514/516 Rural Development Properties	60	25
Section 538 New Construction/Substantial Rehab w/Green	60	25

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any

program or activity conducted or funded by USDA (not all bases apply to all programs).

Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: OASCR.Program-Intake.

Joaquin Altoro,

Administrator,

Rural Housing Service.